

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TIFFANY JORDAN,

Plaintiff,

- against -

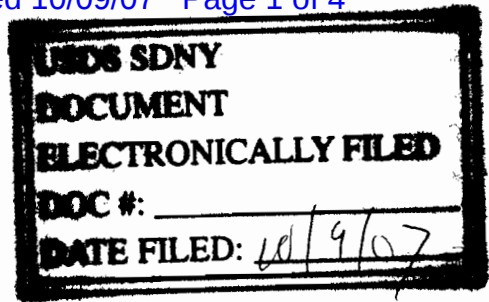
MICHAEL J. ASTRUE, COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

JOHN G. KOELTL, District Judge:

The plaintiff, Tiffany Jordan, brought this action against the Commissioner of Social Security ("Commissioner") seeking review of a decision of the Commissioner denying her claim for Supplemental Security Income ("SSI") benefits. The Commissioner moved to dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

The Commissioner argues that to the extent the plaintiff is appealing the September 22, 2006 decision of the Appeals Council denying the request for review of the Administrative Law Judge's decision, the complaint should be dismissed as time barred under 42 U.S.C. § 405(g) because it was not commenced within 60 days after the final decision of the Commissioner. The Commissioner further argues that to the extent the complaint challenges the November 2, 2006 decision of the Appeals Council denying the request for reopening of the Appeals Council's September 22, 2006 decision, the Court lacks subject matter jurisdiction to



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MEMORANDUM OPINION AND
ORDER

review that order because it is not a final decision of the Commissioner and is therefore not subject to review.

The plaintiff failed to respond to the motion by the original deadline. The Court thereafter issued orders dated May 14, 2007 and June 20, 2007 extending the time for the plaintiff to respond to the motion to dismiss. The Court also warned the plaintiff that if the plaintiff failed to respond to the motion to dismiss, the motion may be granted on default in which event the plaintiff would have no trial. The plaintiff has failed to respond to the motion. The Court has reviewed the motion and finds that it is well founded and should be granted.

The plaintiff filed her complaint with the Pro Se Office on November 30, 2006 challenging the September 22, 2006 decision of the Appeals Council. (See Compl. 1.) Under 42 U.S.C. § 405(g), a civil action must be instituted within 60 days after the Appeals Council's notice of denial of request is received by the applicant, and the date of receipt is presumed to be 5 days after the date of notice. 20 C.F.R. § 422.210(c). The filing of the Complaint challenging the September 22, 2006 decision of the Appeals Council was therefore untimely. See Wong v. Bowen, 854 F.2d 630, 631 (2d Cir. 1988) (per curiam); Schoon v. Massanari, No. 01 Civ. 2656, 2001 WL 1641241, at *2 (S.D.N.Y. Dec. 21, 2001); Sykes v. Apfel, No. 97 Civ. 7696, 1998 WL 338104, at *4 (S.D.N.Y. June 24, 1998). The plaintiff has

offered no reason why the time limitation should be extended in this case.

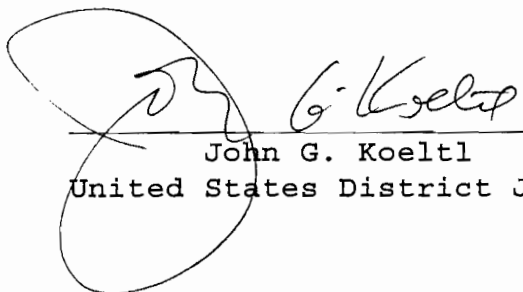
To the extent that the plaintiff is challenging the decision of the Appeals Council that declined to reopen her case, that decision is not a final order and therefore not subject to judicial review. See Califano v. Sanders, 430 U.S. 99, 108 (1977); Latona v. Schweiker, 707 F.2d 79, 81 (2d Cir. 1983); Stoothoff v. Apfel, No. 98 Civ. 5724, 1999 WL 493356, at *3 (S.D.N.Y. July 12, 1999).

Conclusion

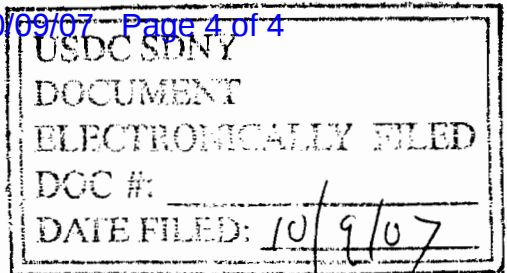
The Commissioner's motion to dismiss this action (Docket No. 6) is therefore granted. The Clerk is directed to enter judgment dismissing the complaint and closing this case.

SO ORDERED.

Dated: New York, New York
October 8, 2007



John G. Koeltl
United States District Judge



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PAYDAY ADVANCE PLUS, INC., individually
and on behalf of all persons similarly
situated and on behalf of the general
public,

06 Civ. 1923 (JGK)

ORDER

Plaintiff,

- against -

MIVA, INC.,

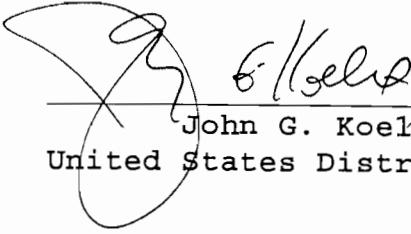
Defendant.

JOHN G. KOELTL, District Judge:

For the reasons stated on the record at the hearing held on
October 4, 2007, the defendant's motion to stay is **denied**.

SO ORDERED.

Dated: New York, New York
October 5, 2007



John G. Koeltl
United States District Judge